

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-220535

DATE: October 22, 1985

MATTER OF: Galaxy Distributing, Inc.

DIGEST:

Bid was properly rejected as nonresponsive where the descriptive literature required to be submitted contained a legend stating that design and specifications are subject to change without notice because there is nothing else in the bid indicating that the legend was not intended to affect the bidder's obligations under its bid.

Galaxy Distributing, Inc. protests the rejection of its bid under invitation for bids (IFB) No. DAKF23-85-B-0171 issued by the Department of the Army for three types of computer printers. Galaxy's low bid was determined to be nonresponsive because the descriptive literature submitted with its bid for each of the three items contained a legend stating that specifications are subject to change without notice. Award was made to the second low bidder, Wordplex Corporation, whose descriptive literature contained a similar phrase, which was crossed out. Galaxy contends that it has been a government supplier for approximately 2 years and its bids have never been rejected as nonresponsive because of similar legends on its descriptive literature. Galaxy further argues that the phrase is included on almost all specification sheets and that the manufacturers do not permit its removal. We dismiss Galaxy's protest.

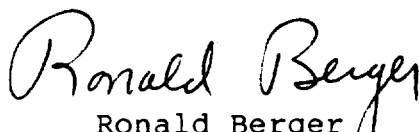
The IFB required, and warned in three places, that bidders must submit with their bids complete descriptive literature or that the bid would be considered nonresponsive and rejected. Where, as here, the government requires descriptive literature and uses it to determine precisely what the bidder is offering and will be bound to furnish if awarded the contract, any statement in the literature that specifications are subject to change is a

material deficiency rendering the bid nonresponsive. See, e.g., North Park Village Homes, Inc., B-216862, Jan. 31, 1985, 85-1 CPD ¶ 129. We have permitted exceptions only where it was reasonably clear from the face of the bid that a "subject to change" legend was not intended to reserve the right to the bidder to change the offered product or to deviate from any of the government's material requirements. Syntrex, Inc., et al., 63 Comp. Gen. 360 (1984), 84-1 CPD ¶ 522.

In order to determine whether the legend did improperly reserve the right to alter the offered product, we must examine the bid as a whole. See North Park Village Homes, Inc., B-216862, supra. Here, although Galaxy is offering products not manufactured by it, there is nothing in its bid such as a cover letter which states that Galaxy is offering units from stock or units already manufactured which meet all of the specification requirements. See Burley Machinery, Inc., 55 Comp. Gen. 592 (1975), 75-2 CPD ¶ 411. As a result, we find that the uncontradicted legend on the literature submitted by Galaxy not only reserved the manufacturer's right to alter its product's specifications, but it granted Galaxy the right to supply units with characteristics other than those listed in the descriptive literature. Therefore, Galaxy's bid was properly rejected as nonresponsive. North Park Village Homes, Inc., B-216862, supra. The fact that an agency in the past may have erroneously accepted Galaxy's bids which contained such a legend is, of course, not a justification for repeating the error here. See id.

Since Wordplex deleted the legend from its descriptive literature, the legend did not qualify Wordplex's bid. Regardless of whether the bidder has the authorization from the manufacturer to remove a restrictive legend from its literature, when the bidder submits a conforming bid that does not contain a "subject to change" legend, the bidder is legally bound to supply the item offered in its bid without any specification changes. Therefore, such a bid, unlike the protester's, is responsive.

The protest is dismissed.


Ronald Berger
Deputy Associate
General Counsel